THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.1.2007

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

W.P.No.15907 of 2001,
W.P.No.40827 of 2002,W.P.No.6081 of 2004
and W.P.No.7274 of 2006

R.Kannan
Secretary,
Muthuthevar Mukkulathoor Higher
Secondary School, Tirupparankundram,
Thiru Nagar, Madurai 6. ..Petitioner in W.P.No.15907 of 2001,
W.P.No.40827 of 2002 &
W.P.No.6081 of 2004

C.Duraipandian .. Petitioner in W.P.No.7274 of 2006

vs.

1. The Secretary to Government,
School Education Department,
Fort St. George,
chennai - 9 .. 1st respondent in W.P.No.15907 of 2001

2. The Director of School Education,
College Road,
Nungambakkam,
Chennai - 6. .. 2nd respondent
in W.P.No.15907 of 2001,
1st respondent in W.P.No.40827 of 2002
and W.P.No.6081 of 2004

3. The District Educational Officer,
Madurai. ..3st respondent in
W.P.No.15907 of 2001,
4th respondent in W.P.No.40827 of 2002 and
2nd respondent in W.P.No.6081 of 2004

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C.Duraipandiyan
(R.4 impleaded as per the order
dated 18.12.2001 in W.M.P.No.35537 of 2001)

.. 4th respondent in
W.P.No.15907 of 2001
and 5th respondent in W.P.No.40827
of 2002

The Joint Director of School
Education (Higher Secretary),
College Road,
Nungambakkam, Chennai - 6. .. 2nd respondent in W.P.No.40827
of 2002

The Chief Educational Officer,
Madurai .. 3rd respondent in W.P.No.40827
of 2002

The Government of Tamil Nadu,
rep. by its Secretary,
Commercial Taxes Department,
Chennai - 600 009. .. 1st respondent in W.P.No.7274
of 2006

The Inspector General of Registration,
Santhome High Road, Chennai - 600 028 .. 2nd respondent in W.P.7274 of
2006

R.Kannan .. 3rd respondent in W.P.No.7274
of 2006

These Writ Petitions are filed under Article 226 of the Constitution of India as stated therein.

W.P.No.15907 of 2001:

For petitioner : Mr.G.Masilamani
Senior Advocate for
Mr.G.K.R.Pandian

For respondents : Mr.C.Thirumaran
Government Adv ocate
for R1 to R3
Mr.K.Doraisami, Senior Advocate
M/s.Muthumani Doraisami for R4

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W.P.No.6081 of 2004:

For petitioner : Mr.G.Masilamani
Senior Advocate for
Mr.G.K.R.Pandian

For respondents : Mr.C.Thirumaran
Government Advocate for R1 and 2.

W.P.No.40827 of 2002:

For petitioner : Mr.G.Masilamani
Senior Advocate for
Mr.G.K.R.Pandian

For respondents : Mr.C.Thirumaran
Government Advocate for R1 to R4
Mr.K.Doraisami, Senior Advocate for
M/s.Muthumani Doraisami for R5

W.P.No.7274 of 2006:

For petitioner : Mr.K.Doraisami, Senior Advocate
M/s.Muthumani Doraisami

For respondents : Mr.C.Thirumaran
Government Advocate for R1 & R2
Mr.G.Masilamani
Senior Advocate for
Mr.G.K.R.Pandian for R3

C O M M O N O R D E R

W.P.No.15907 of 2001:

The writ petition has been filed for the issuance of a Writ of Certiorari to call for the records on the file of the third respondent vide his proceedings in Na.Ka.No.931/Ah.3/2001, dated 24.8.2001 and the consequential order vide proceedings in Na.Ka.No.931(2)/Ah.3/2001, dated 24.8.2001 and quash the same.

W.P.No.40827 of 2002:

The writ petition has been filed for the issuance of a Writ of Certiorarified Mandamus to call for the records of the second respondent vide his proceedings No.Thi.Mu.22946/W12/2002, dated 22.10.2002 and the consequential order passed by the fourth respondent vide his proceedings No.Mu.Mu.No.931/Aa3/2002, dated 1.11.2002, quash the same and further to direct the respondents 1 to 4 to continue the direct payment of salary to

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the staffs of the School till the Statutory Appeal preferred by the petitioner on behalf of the Educational Agency under Section 44(5) of the Tamil Nadu Societies Registration Act, 1975, is disposed off in accordance with law.

W.P.No.6081 of 2004:

The writ petition has been filed for the issuance of a Writ of Certiorarified Mandamus to call for the records of the second respondent in his proceedings in Na.Ka.No.931/B1/2001, dated 5.12.2003, quash the same and to direct the second respondent to approve the re-nomination of the petitioner as the Secretary of the School Committee of Muthuthevar Mukkulathore Higher Secondary School.

W.P.No.7274 of 2006:

The writ petition has been filed for the issuance of a Writ of Certiorari to call for the records of the first respondent in G.O.Ms.(RT) No.1186/2002, dated 27.12.2002, and the consequential order of the second respondent in No.57706/A1/2002, dated 9.8.2005 and quash the same.

2. All the writ petitions are taken up together to be heard and disposed of, since they pertain to connected issues.

3. Heard the learned counsels appearing on behalf of the petitioners as well as for the respondents.

4. It is submitted by the petitioner, namely, R.Kannan in W.P.No.15907 of 2001, W.P.No.40827 of 2002 and W.P.No.6081 of 2004 that Muthuthevar Mukkulathore Higher Secondary School, Madurai, was started in the year 1953. In the year, 1957, Sri.K.Muthuthevar Mukkulathore Secondary School Trust (Educational Agency) was registered under the Societies Registration Act, 1860, with registration No.2/1957. Allegedly the Educational Agency, namely, the above named Society, had become defunct, on 26.1.1983, under Section 44(2) of the Tamil Nadu Societies Registration, Act 1975. However, the same was not known to the office bearers of the Educational Agency as well as the School Committee of Muthuthevar Mukkulathore Higher Secondary School, Madurai.

5. On 6.6.1999, R.Kannan was unanimously elected as the Secretary of the Educational Agency, namely, Sri.K.Muthuthevar Mukkulathore Secondary School Trust. Consequently, R.Kannan was appointed as the Secretary of Muthuthevar Mukkulathore Higher Secondary School Committee, on 17.2.2000. On 29.2.2000, the District Educational Officer, Madurai had approved the nomination of R.Kannan as the Secretary of the said School Committee. On 14.2.2001, a statutory appeal had been preferred, under Section 44(5) of the Tamil Nadu Societies Registration Act, 1975, by the petitioner, on behalf of the Educational Agency, against the order passed under Section 44(2) of the Tamil Nadu Societies Registration Act, 1975. An appeal was preferred, on behalf of the Educational Agency, to the Secretary to Government, Commercial Tax Department, under Section 37(3) of the Tamil Nadu Societies Registration Rules, 1978, to revive the society.

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6.In the meantime, one C.Duraipandian, (petitioner in W.P.No.7274 of 2006) had forged the signature of the Educational Agency's President, M.Krishnamoorthy, and fabricated the documents to start another Society with a similar name as that of the earlier Society, which was declared as defunct. On 17.2.2001, a police complaint was given by M.Krishnamoorthy against C.Duraipandian and a criminal case, under Sections 417,467, 468 and 471 of the Indian Penal Code, was registered against C.Duraipandian in Thirunagar Police Station, Madurai, in F.I.R.No.60 of 2001.

7.On 11.5.2001, a show cause notice was issued by the District Educational Officer, Madurai, on the basis of the complaint given by C.Duraipandian and his supporters. Therefore, on 21.5.2001, Kannan had given his explanation to the District Educational Officer, Madurai, for the show cause notice, dated 11.5.2001, along with the relevant supporting documents. An explanation had also been sent to the Chief Educational Officer, Madurai, along with the supporting documents, on 8.8.2001. The District Educational Officer, had cancelled the approval of the petitioner's Secretaryship, on 24.8.2001, and on the same day, he had taken steps for direct payment of the salary to the Staff of the School by a separate order. The order of cancellation and the order to make the direct payment of salary has been challenged in W.P.No.15907 of 2001.

8.On 11.3.2002, Kannan had sent a representation to the Director of School Education along with the relevant documents requesting that the Society started by C.Duraipandian should not be accorded sanction as the Educational Agency.

9.A writ petition in W.P.No.40827 of 2002 had been filed against the order of the Joint Director of School Education, Chennai, approving the School Committee headed by Bhagiathammal as requested by C.Duraipandian, thereby, the Society started by C.Duraipandian had also been accorded sanction as the Educational Agency of the School. On 1.11.2002, the District Educational Officer, Madurai, had approved C.Duraipandian as the Secretary of the School Committee. The School having been established in the year 1953, the Educational Agency, namely, Sri.K.Muthuthevar Mukkulathore Secondary School Trust, was given the Management of the School from 1957 to 2000 and only one Society was functioning after coming into force of the Tamil Nadu Registration Act, 1975. Due to non-filing of the audit return by the Society, under Section 16 of the Act, the Society was believed to have become defunct from the year 1983. However, this was neither known to the office bearers of the Society or the School Committee. Whileso, on 17.2.2000, R.Kannan was appointed as the Secretary of Muthuthevar Mukkulathore Higher Secondary School Committee.

10.When it came to be known, steps were taken to revive the defunct society. Since there was a delay in preferring the appeal against the order declaring the society as defunct, G.O.Ms.No.1186, Commercial Tax (M) Department, dated 27.12.2002, had been passed by the Secretary to

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Government, Commercial Tax Department, condoning the delay and exemption, under Rule 37(3) of the Tamil Nadu Societies Registration Rules, 1978, was granted to prefer the statutory appeal. The statutory appeal preferred by R.Kannan was allowed by the Inspector General of Registration, Chennai, on 9.8.2005. The said order, dated 9.8.2005, has been challenged by C.Duraipandian in W.P.No.7274 of 2006.

11.With regard to W.P.No.7274 of 2006, the main contention put forth by the learned counsel appearing for the petitioner is that the impugned order passed by the Inspector General of Registration, Chennai, dated 9.8.2005, is vitiated, as it is in violation of the principles of natural justice. While passing the impugned order, the Inspector General of Registration, Chennai, the second respondent in W.P.No.7274 of 2006, had not considered the representations of the petitioner, dated 15.6.2002, and 12.2.2003, on merits. A mere reference is made in the impugned order with regard to those representations. Further, the petitioner had not been heard or given a further opportunity of putting forth his contentions before the impugned order was passed. Therefore, according to the petitioner, it is clear that the Inspector General of Registration, had not applied his mind, while passing the impugned order, dated 9.8.2005. While he had referred to 26 references in his order, both the representations of the petitioner, dated 15.6.2002 as well as 12.2.2003, have not been included in the list of references. Even if it is taken to be true that a notice had been sent to the petitioner to appear for an enquiry before the impugned order was passed and even in case, the petitioner had not appeared inspite of receiving the said notice, it is the duty cast on the the Inspector General of Registration, to consider the written representations submitted by the petitioner on merits. He has also submitted that G.O.Ms.(RT) No.1186, dated 27.12.2002, had been passed by misconstruing the provisions of Section 54 of the Tamil Nadu Societies Registration Act, 1975, granting exemption of Section 37(3) of the Act. In such circumstances, the order, dated 9.8.2005, is void and cannot be sustained in the eye of law.

12.Another contention raised by the petitioner is that the impugned order of the the Inspector General of Registration, Chennai, dated 9.8.2005, says that the Notification issued, under Section 44 of the Tamil Nadu Societies Registration Act, 1975, (hereinafter called as the Act) dissolving Sri K.Muthuthevar Mukkulathore Secondary School Trust, (Registration No.2/1957) is unsustainable, since the Gazette Notification was wrongly issued under clause 3 of Section 44 instead of clause 4 of Section 44 of the Act. The petitioner states that even if a wrong provision has been quoted, the second respondent ought to have taken into consideration the fact that the contents of the Gazette Notification is only regarding the dissolution of the Trust. If the reasoning of the Inspector General of Registration, Chennai, is accepted, then hundreds of Societies dissolved under the same Notification would have to be revived and it would cause a major chaos and it would amount to unsettling many settled issues.

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13.The Inspector General of Registration, Chennai, in his impugned order, dated 9.8.2005, had primarily proceeded on the footing that there was no order of dissolution of the Society. As the said Trust had continued to be in existence from the time of its inception in the year 1957, there was no necessity of an order to be passed in the appeal, reviving the said Trust, as prayed for.

14. With regard to the issue of locus standi, it was stated that R.Kannan, the third respondent in W.P.No.7274 of 2006, who lacks the status to question the dissolution of the Trust and for requesting restitution of the same, since he could not have been made a member of a defunct Trust, which had later been legally dissolved. The petitioner C.Duraipandian is the person, who is really aggrieved by the order, dated 9.8.2005.

15. Per contra, the learned counsel appearing for the third respondent has submitted that the petitioner C.Duraipandian cannot be taken to be an aggrieved person or an interested person, since he is not even a member of Sri K.Muthuthevar Mukkulathore Higher Secondary School Trust, registered in the year 1957, under Registration No.2/1957. It is the petitioner, who has not come to this Court with clean hands and that the writ petitions have been filed with a malafide intention to appropriate the properties managed by the Trust as well as the good will that has been created.

16. The learned counsel appearing on behalf of R.Kannan had contended that the petitioner C.Duraipandian could not challenge the order, dated 27.12.2002, granting exemption to Sri K.Muthuthevar Mukkulathore Secondary School Trust, (Registration No.2/57) to file an appeal under Section 44(5) of the Tamil Nadu Societies Registration Act, 1975, since it would be hit by laches, as it is challenged after more than three years from the date of such order.

17. With regard to the order of the second respondent, dated 9.8.2005, which is also under challenge in the said

writ petition in W.P.No.7274 of 2006, it is contended on behalf of the third respondent therein that the representations said to have been made by the petitioner, on 15.6.2002 and 12.2.2003 have been considered by the second respondent in his order, dated 9.8.2005. The second respondent's order ought not be taken as a judicial order with mathematical accuracy and logical perfection in its findings. It is clear on the face of the order that the representations of the petitioner had been considered and there was enough application of mind on the part of the second respondent. Further, it is contended on behalf of the third respondent that the second respondent, while disposing of the appeal, has given sufficient reasons for his order stating that the Trust is found to have been continuously functioning without any lapses, including regular accounting and conducting of general body meetings, based on the report submitted by the

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District Registrar, Madurai (South). Therefore, it is not proper on the part of the petitioner, C.Duraipandian, to contend that the second respondent had not come to any concrete conclusion in his order, dated 9.8.2005, with regard to the above mentioned Trust. From the order, dated, 9.8.2005, passed by the second respondent, it is seen that he has concluded by saying that there is no necessity of passing any order in the appeal reviving the Trust, as it had never become defunct in the eye of the law.

18.It was contended on behalf of C.Duraipandian that the appropriate Gazette Notification had not been published in accordance with Section 44 (4) of the Act, enabling R.Kannan to file an appeal under Section 44(5) of the Act. Publication of the Gazette Notification under Section 44(3) will not enable him to file an appeal under Section 44(5). That being the position of law, as held by the Inspector General of Registration, Chennai, the entire exercise undertaken by R.Kannan leading up to the appeal, would have been redundant and various other consequences would have arisen in such a scenario. In order to settle the major issues, it was necessary for the Inspector General of Registration, Chennai, to have taken a clear stand, one way or the other, by his order, dated 9.8.2005. However, on a careful perusal of the second respondent's order, dated 9.8.2005, it could be seen that new avenues have been opened by unsettling the settled position of facts and law.

19.The learned counsel appearing on behalf of the petitioner R.Kannan had pointed out all the relevant provisions of the Tamil Nadu Societies Registration Act, 1975, while stating that the Society in question was to have become defunct under the relevant provisions and the only remedy available was to revive the same in accordance with the provisions of law. Therefore, the required steps had been taken to revive the Society, after obtaining the necessary leave to condone the delay in making the application. Once an order had been passed to revive the Society, such revival would date back to its inspection, as though there was no break in its continued existence. In accordance with the provisions of the Tamil Nadu Societies Registration Act, 1975, the Society was deemed to have been dissolved, since it had not complied with the prescribed conditions necessary in law for its continued existence. However, when an appeal had been filed challenging the order of dissolution of the Society, the Secretary Commercial Tax Department, Government of Tamil Nadu, had passed G.O.Ms.(RT) No.1186, dated 27.12.2002, granting exemption to the petitioner Trust to file an appeal to the Inspector General of Registration, under Section 44(5) of the Tamil Nadu Societies Registration Act, 1975. Thereafter, the petitioner had made a representation to the Inspector General of Registration, Chennai, against the removal of the Society from the list of Registered Societies. However, the Inspector General of Registration, Chennai, in his proceedings No.57706/A1/2002, dated 9.8.2005, had stated that the Society in question, namely, Sri.K.Muthuthevar Mukkulathore Higher Secondary Trust, Madurai, Registration No.2/1957, had never been validly removed from the list of

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registered Societies, in accordance with the provisions of law and therefore, there was no need for an appeal or representation to challenge such removal of the Society from the list of registered Societies. In effect, by the said order, dated 9.8.2005, the Inspector General of Registration, Chennai, had recognised the continued existence of the said Society, without recognising Muthuthevar Mukkulathore Higher Secondary School Committee said to have been formed on 5.1.2001 and registered, subsequently, with Registration No.1/2001 as stated by the petitioner in W.P.No.7274 of 2006. Therefore, the said writ petition W.P.No.7274 of 2006, had been filed challenging both the Government Order in G.O.Ms.R.T.No.1186, dated 27.12.2002 and the order, dated 9.8.2005, passed by the Inspector General of Registration, Chennai.

20.Now, the main question, which has to be decided by this Court is as to which of the two Societies namely, Sri.K.Muthuthevar Mukkulathore Secondary School Trust,(Registration No.2/1957) and Muthuthevar Mukkulathore Higher Secondary School Committee (Registration No.1/2001), is the Society which would be recognised in the eye of law to be the Educational Agency to administer and manage the Muthuthevar Mukkulathore Higher Secondary School, Tirunagar. To answer the said question, it has to be found whether Muthuthevar Mukkulathore Secondary School Trust, Madurai, with registration No.2/1957, continued to be a registered Society from its initial date of registration or whether it had become defunct under Section 12 of the Tamil Nadu Societies Registration Act, 1975, and thereafter, revived by subsequent orders passed by the concerned authorities. The answer to the said question would also depend upon whether Muthuthevar Mukkulathore Higher Secondary School Committee, with registration No.1/2001, had legally and validly taken over the administration and management of Muthuthevar Mukkulathore Higher Secondary School, Tirunagar, at that time the earlier society was said to be not in existence. All the issues involved would possibly be settled if the matter is remitted back to the Inspector General of Registration, Chennai, to decide the matter afresh with regard to the legal position of the rival societies which are in contention, after giving sufficient opportunity to all the parties concerned. The above writ petitioners are given liberty to make detailed representations, along with the relevant supporting documents, in making their claims to the Inspector General of Registration, Chennai, within a period of two weeks from the date of receipt of a copy of this order. The Inspector General of Registration is directed to decide the issues on merits and in accordance with law, based on the said representations, within six weeks from the date of receipt of such representations, by fixing specific dates of hearing, enabling the parties to participate in the proceedings.

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21.Therefore, the earlier order No.No.57706/A1/2002, dated 9.8.2005, passed by the Inspector General of Registration, Chennai, in this regard is set aside and the parties are to maintain status quo as on today till the final disposal of their representations by the Inspector General of Registration, Chennai.

22.With the above directions, the writ petitions are disposed of.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

To:

1. The Secretary to Government,
   School Education Department,
   Fort St. George,
   chennai - 9

2. The Director of School Education,
   College Road,
   Nungambakkam, Chennai - 6

3. The District Educational Officer,
   Madurai

4. The Joint Director of School
   Education (Higher Secretary),
   College Road,
   Nungambakkam, Chennai - 6

5. The Chief Educational Officer,
   Madurai

6. The Secretary,
   Government of Tamil Nadu,
   Commercial Taxes Department,
   Chennai - 600 009

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7. The Inspector General of Registration,
   Santhome High Road, Chennai - 600 028.

+ 2 CCs to Mr.G.K.R.Pandian, Advocate SR NO 4980, 4981

+ 1 CC to M/s.Muthumani Doraisami, Advocate SR NO 5840



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